

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

February 14, 2005

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Sliding Scale 2005, Project No. P054503

Dear Secretary Clark:

Motion Picture Association of America ("MPAA") is pleased to submit these comments ("Comments") in response to the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking ("NPRM") to make permanent a sliding scale mechanism for obtaining verifiable parental consent to collect personal information from a child under 13 years old.¹

Several MPAA member companies² and their affiliates³ maintain Web sites directed to children. Therefore, they not only have a direct interest in the

¹ These comments are in response to the Commission's NPRM published in 70 *Fed. Reg.* 2580 (January 14, 2005), *available at* <http://www.ftc.gov/opa/2005/01/coppafrn.htm>.

² MPAA members include: Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Warner Bros. Entertainment, Inc.; Universal City Studios LLLP; and The Walt Disney Company.

³ For example, Nickelodeon is an affiliate of Paramount Pictures.

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Commission's action in this proceeding but also offer a first-hand understanding of the capabilities and costs of the presently available technologies for securing verifiable parental consent.

MPAA fully supports the Commission's proposal to make permanent the "sliding scale mechanism" for obtaining verifiable parental consent. The sliding scale mechanism is effective, efficient and successful, and many website operators have made significant investments to comply with that standard. As the FTC notes in the NPRM, other potential methods for obtaining verifiable parental consent, such as digital signature technology, are not proven or widely available, and may not be available in the near future. There is no good reason to switch to less certain technologies when the current solution works very well. Making the sliding scale approach permanent also allows website operators to launch children's content and deploy sliding scale technologies without fear that any investment in the sliding scale mechanism will suddenly be rendered worthless.

I. The sliding scale approach effectively protects the privacy of children.

The sliding scale mechanism has proven to be an effective means of protecting children's privacy.⁴ In the supplementary information in the NPRM and

⁴ The sliding scale mechanism allows website operators to use email to get consent from parents for internal uses of a child's personal information. Disclosing a child's personal information to third parties requires "more reliable methods of obtaining verifiable parental consent" including print-and-send forms, requiring a parent to use a credit card in connection with a transaction, toll-free

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in earlier proceedings covering this rule, the Commission implied that there have not been significant complaints from parents alleging breaches in their children's privacy by the operators of children's Web sites. Similarly, MPAA member companies have fielded virtually no such complaints from parents concerning infringement of their children's privacy when using the sliding scale mechanism. The Commission can be confident that it is codifying a rule that has been effective and successful in protecting children's privacy for the last five years. Certainly, in the absence of complaints or other record evidence that the sliding scale approach is inadequate, there is no valid reason to require sites to use unproven technology to solve a problem that does not exist.

II. Web site operators have made investments in sliding scale technologies.

MPAA members and other companies have made significant investments to implement sliding scale technologies. These costs include site design and hardware acquisitions as well as the up-front and on-going personnel costs associated with setting up and maintaining the verification systems.

Abandoning the sliding scale mechanism for a new, undefined method of securing verifiable parental consent unnecessarily penalizes companies that have made this investment. This financial penalty would particularly harm small businesses that

telephone numbers, digital certificates, or email accompanied by a password sent to the parent. *See* 16 CFR 312.5(b).

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may not be able to absorb the additional costs. MPAA companies would also be harmed given the significant manpower, infrastructure and design investments they have made to ensure their compliance with the sliding scale mechanism.

Moreover, if the sliding scale approach is made permanent, it could spur the development of other Web-based services for children. Failure to make the sliding scale a permanent part of the Children's Online Privacy Protection Rule, however, would perpetuate the current uncertainty about the longevity of the rule and could cause innovative companies to stay on the sidelines, rather than offer new products and services for children.

The costs of abandoning the sliding scale mechanism are real. Absent any tangible benefits of a new form of obtaining verifiable parental consent, it makes no sense to impose these costs on companies that have been faithfully complying with existing standards.

III. Consumer acceptance of digital signature technologies continues to lag expectations.

When the FTC originally extended the life of the sliding scale mechanism, the Commission noted that "secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent are not yet widely

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available at a reasonable cost.”⁵ In the current NPRM, the FTC concludes that digital signature technology is still not readily available: “At the present time, however, as in 2002, it appears that the expected progress in available technology has not occurred.”⁶

The Commission is correct. Digital signature technology has not advanced and is not a reasonable alternative for obtaining verifiable parental consent. In their comments to the FTC concerning extending the sliding scale mechanism for another two years, several MPAA members noted that the range of digital signature technologies are either too costly for consumers (*e.g.*, biometric verification systems), not able to confirm the identity of users (*e.g.*, P3P), or not widely deployed (*e.g.*, encryption key systems).⁷ While digital signature technology may have grown incrementally to support various business functions, there is still no evidence that it has gained wide-spread consumer acceptance. Indeed, technologies like public key infrastructure appear to be marketed almost exclusively for business applications.⁸ Moreover, encryption key technology is only effective at

⁵ 67 *Fed. Reg.* 18819 (April 17, 2002).

⁶ 70 *Fed. Reg.* 2581 (January 14, 2005).

⁷ Comments of AOL Time Warner et al. to Project No. P994504 (November 30, 2001), *available at* <http://www.ftc.gov/privacy/coppa2/comments/aol.htm>.

⁸ *See e.g.*, <http://www.verisign.com/products-services/security-services/pki/pki-application/index.html> (marketing Verisign’s PKI technology as a way for “enterprises to retain full control for [sic] access to information”).

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confirming which computer has transmitted consent and cannot independently identify the user (*i.e.*, the parent or the child).

Even to the extent digital signature technologies are available, the financial costs of implementing these technologies would be significant, both for website operators and consumers. These costs cannot be justified when, as discussed above, current privacy protections have been effective. Moreover, making the sliding scale mechanism permanent does not preclude the use of other methods of obtaining verifiable parental consent now or in the future. Indeed, under the proposed final rule, companies remain free to implement digital signature technology if they chose.

The lack of a feasible technological alternative only reinforces the conclusion that the sliding scale mechanism should be made permanent. It makes no sense to rely on unproven technology to perform the important task of protecting children's privacy.

IV. Conclusion


When the sliding scale mechanism was first put into place, maintaining some flexibility to embrace potential future technological innovations was warranted because the sliding scale had not been tested and other technologies were being developed. Now that the sliding scale mechanism has proven effective,

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that same reticence to codify the rule is no longer appropriate. Moreover, the hoped-for technological advances have not materialized. It would be bad public policy to abandon a proven, effective tool for an unspecified, unproven technology.

MPAA urges the FTC to adopt this final rule and establish a permanent mechanism that companies can rely on to obtain verifiable parental consent under COPPA and continue to offer children new content and services.

Sincerely,



Christine Varney
Mary Ellen Callahan
Andrew Graziani
Hogan & Hartson L.L.P.
Counsel to MPAA